

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

FREEDOM FROM RELIGION FOUNDATION, INC., et al.)	
)	
)	
Plaintiffs)	
)	
v.)	Civil Action No. 17-cv-330
)	
DONALD J. TRUMP, President, et al.)	
)	
Defendants)	

UNOPPOSED MOTION TO STAY PRETRIAL CONFERENCE

Defendants President Donald J. Trump and John Koskinen, Commissioner, Internal Revenue Service, request that the pretrial conference set for October 4, 2017, be stayed pending the resolution of the Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction or for Failure to State a Claim, ECF No. 16.

The Court has set a pretrial conference for October 4, 2017, at 1 p.m. The conference should be stayed because the defendants' pending motion to dismiss raises issues of subject matter jurisdiction, and any further proceedings in the case should await resolution of those jurisdictional issues. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." (quoting *Ex parte McCordle*, 74 U.S. (7 Wall.) 506, 514 (1869))); *Scott Air Force Base Props., LLC v. County of St. Clair*, 548 F.3d 516, 520 (7th Cir. 2008) ("[I]t is axiomatic that a federal court must assure itself that it possesses jurisdiction over the subject matter of an action before it can proceed to take any action respecting the merits of the action." (quoting *Cook v. Winfrey*, 141 F.3d 322, 325 (7th Cir. 1998))).

A stay would also serve interests of judicial economy. The Court's resolution of the defendants' motion to dismiss may bring this case to an end, or at least may narrow or clarify the issues to be litigated in the case.¹

The Government conferred with the plaintiffs to determine their position on the Government's request for a stay. The plaintiffs indicated that they do not oppose the request.

Date: September 5, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

JEFFREY M. ANDERSON
Acting United States Attorney

LESLEY FARBY
Assistant Branch Director

s/ JAMES C. LUH

JAMES C. LUH
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave NW
Washington DC 20530
Tel: (202) 514-4938
Fax: (202) 616-8460
E-mail: James.Luh@usdoj.gov
Attorneys for Defendants

¹ Proposed intervenors Charles Moodie, Koua Vang, Patrick Malone, and Holy Cross Anglican Church also filed a motion to dismiss for failure to state a claim, Proposed Def.-Intervenors' Mot. to Dismiss, ECF No. 19. In the Government's view, that motion has not been properly filed, because the Court has not yet acted on the proposed intervenors' motion to intervene, and so the proposed intervenors are not currently parties in the case. Also, the Court may not consider the merits of the proposed intervenors' motion to dismiss before it considers whether it has subject matter jurisdiction. *See Sinochem Int'l Co. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422, 430–31 (2007) (“[A] federal court generally may not rule on the merits of a case without first determining that it has jurisdiction over the category of claim in suit (subject-matter jurisdiction)” (citing *Steel Co.*, 523 U.S. at 93–102)).